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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

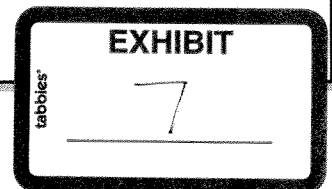
W. A. DREW EDMONDSON, in)
his capacity as ATTORNEY)
GENERAL OF THE STATE OF)
OKLAHOMA and OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT in his)
capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)
Plaintiff,)
vs.) No. 05-CV-00329-GKF-PJC
TYSON FOODS, INC, et al.,)
Defendants.)

VIDEOTAPED DEPOSITION OF TERRY PEACH,
before the undersigned Certified Shorthand Reporter,
taken on behalf of the Defendants, at the Attorney
General, 313 Northeast 21st Street, Oklahoma City,
Oklahoma, commencing at 9:06 a.m., on April 10, 2009,
pursuant to the stipulations of the parties.

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1 Q. Okay. Is there a reason you don't use
2 chicken litter?

3 A. It's the cost prohibitive as far as
4 transportation and availability.

5 Q. All right. It's just not available where
6 you are?

7 A. Yes.

8 Q. If it were available, would you use it?

9 A. If it was cost effective, I would probably
10 use some poultry litter, yes.

11 Q. So you don't have any philosophical
12 objection to the use of poultry litter on cow
13 pastures?

14 A. No.

15 MR. HAMMONS: Object to the form.

16 Q. (By Mr. Sanders) Is that correct?

17 A. Yes. No, I don't.

18 Q. Can you just give me a short explanation
19 of what the differences, if any, are in your role as
20 Commissioner of ODAFF and your position as Secretary
21 of Agriculture in the Governor's cabinet?

22 A. Well, the Commissioner of Agriculture is
23 actually a constitutional position and the Secretary
24 of Agriculture is a statute position. And the roles
25 are very similar.

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1 A. Yes, it appears to say that.

2 Q. (By Mr. Sanders) All right. And since
3 the application of litter in the IRW has not been
4 banned I take it that ODAFF has not seen fit to ban
5 it; is that correct?

6 MR. HAMMONS: Object to the form.

7 A. I'd refer that question to Mr. Parrish.

8 Q. (By Mr. Sanders) Well --

9 A. Because there may be farms that it is
10 limited. I can't answer that question.

11 Q. Well, I -- let me ask you then about a
12 watershed wide ban. This -- this statute gives ODAFF
13 the authority to ban all litter application in the
14 IRW, doesn't it?

15 A. Yes.

16 MR. HAMMONS: Object to the form.

17 Q. (By Mr. Sanders) And ODAFF has not seen
18 fit apparently to ban all litter application in the
19 IRW, has it?

20 A. That's correct.

21 MR. HAMMONS: Object to the form.

22 Q. (By Mr. Sanders) Has the Attorney General
23 asked you to ban litter application in the IRW?

24 MR. HAMMONS: I objection -- I objection.
25 Objection. Attorney-client privilege, and I direct

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1 A. Restate that question.

2 Q. (By Mr. Sanders) It's safe to say, isn't
3 it, that the state of Oklahoma is satisfied with the
4 existing litter application rate rules in the
5 Illinois River watershed at least as expressed
6 through its agent the -- ODAFF; is that right?

7 MR. HAMMONS: Object to the form.

8 A. Yes, we would be -- have -- we would be
9 satisfied with the rules.

10 Q. (By Mr. Sanders) Well, I mean they are
11 your rules, aren't they?

12 A. Yes. I said we would be satisfied with
13 those rules.

14 Q. It's safe to say then that ODAFF
15 represents the state of Oklahoma with regard to the
16 matters relating to chicken litter; right?

17 MR. HAMMONS: Object to the form.

18 A. Yes, sir.

19 Q. (By Mr. Sanders) And it's safe to assume
20 then that the state of Oklahoma is satisfied with the
21 litter application rates that are presently allowed
22 by law in the Illinois River watershed; is that
23 correct?

24 MR. HAMMONS: Object to the form.

25 A. Yes, sir.

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1 aware that any of those Defendants have violated any
2 Oklahoma law or ODAFF regulations in the IRW?

3 MR. HAMMONS: Object to the form.

4 A. I'd have to refer that question to Dan
5 Parrish, the director of that division, because there
6 may be violations that I'm unaware of.

7 Q. (By Mr. Sanders) All right. But as you
8 sit here today you're not aware of any violations by
9 any of those Defendants in the IRW?

10 A. No.

11 Q. It's correct, isn't it, that there are
12 lots of different sources of or potential sources of
13 nutrients in the -- in the water?

14 MR. HAMMONS: Object to the form.

15 A. In the water or in the Illinois River
16 watershed? What's your question?

17 Q. (By Mr. Sanders) In the waters of the
18 Illinois River watershed.

19 A. Yes, there are many potential sources.

20 Q. And it's -- you can't really address water
21 quality without addressing all the potential sources
22 of contribute -- or contributors of nutrients, can
23 you?

24 MR. HAMMONS: Object to the form.

25 A. We at the Department of Agriculture -- I

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1 would not speak for other agencies, but that would be
2 correct, yes.

3 Q. (By Mr. Sanders) All right. And let me
4 ask you, would stream bank erosion be a potential
5 contributor of nutrients?

6 A. Yes.

7 Q. What about construction where they move
8 dirt around and so forth?

9 A. Yes, it could.

10 Q. Rural roads, gravel roads and so forth?

11 A. Yes, sir.

12 Q. And maintenance of roads when you grade --

13 A. Yes, sir.

14 Q. -- gravel roads and so forth? Recreation,
15 is that a potential source of nutrients?

16 A. Yes, sir.

17 Q. People enter the water?

18 A. Yes, sir.

19 Q. They leave trash and sometimes bodily
20 waste and so forth; is that correct?

21 A. Yes, sir.

22 Q. Septic tanks can sometimes be substandard
23 and be sources of nutrient loading to waters; is that
24 correct?

25 A. Yes, sir.

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1 Q. Nurseries can be contributors; is that
2 correct?

3 A. Yes, sir.

4 Q. Wildlife can be a contributor?

5 A. Yes, sir.

6 Q. And we know the State considers litter to
7 be a contributor, but other farm animals can be
8 contributors. Cattle can be contributors?

9 A. Yes.

10 Q. As matter of fact, state of Oklahoma makes
11 a special effort to develop programs to fence cattle
12 out of -- out of streams and so forth for that very
13 reason; isn't that correct?

14 MR. HAMMONS: Object to the form.

15 A. Restate that question.

16 Q. (By Mr. Sanders) Doesn't the state of
17 Oklahoma develop programs to attempt to fence cattle
18 out of streams to prevent them from depositing bodily
19 waste into -- directly into the waters?

20 MR. HAMMONS: Object to the form.

21 A. Yes, there are opportunities for voluntary
22 programs with partnerships with the NRCS and other
23 groups throughout the state to do that, yes, sir.

24 Q. (By Mr. Sanders) Okay. And like the
25 Oklahoma Conservation Commission has a role to play

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1 plants that have pipes that go directly to the waters
2 of the Illinois River watershed?

3 A. I understand that there are possible other
4 sources, yes. Not that they are a source.

5 Q. Okay. All right. But those other point
6 sources?

7 A. Yes.

8 Q. And do you understand that those point
9 sources contribute the nutrients and bacteria 365
10 days of the year?

11 MR. HAMMONS: Object to the form.

12 A. Yes, sir.

13 Q. (By Mr. Sanders) All right. And do you
14 understand that those -- the nutrients and the
15 bacteria from those point sources occur whether it's
16 a low flow condition in the river or a high flow
17 condition?

18 A. Yes, sir.

19 Q. And in low flow conditions all of that
20 matter doesn't get washed down to Lake Tenkiller
21 right away, does it?

22 MR. HAMMONS: Object to the form.

23 Q. (By Mr. Sanders) Because the river -- the
24 flow in the creeks and river are low.

25 A. I can't speak to the flow of rivers and

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1 Strong about this litigation?

2 A. Possibly since Mr. Strong has been --
3 become the Secretary of Environment, but it would be
4 very minimal since he's just been on duty about two
5 months.

6 Q. You-all haven't discussed it in detail?

7 A. No, sir.

8 Q. Does it seem odd to you that the Attorney
9 General in this litigation is not trying to enjoin
10 the activities or get damages from commercial
11 fertilizer producers?

12 MR. HAMMONS: Object to the form.

13 A. Restate that question.

14 Q. (By Mr. Sanders) Does it seem odd to you
15 that in this litigation the Attorney General is not
16 trying to prohibit the application of inorganic
17 commercial fertilizer in the IRW?

18 MR. HAMMONS: Object to the form.

19 A. Okay, that question was different than the
20 first time --

21 Q. (By Mr. Sanders) I know.

22 A. -- you asked it; so ask it again.

23 Q. I know it was.

24 A. Maybe the third time it will be even
25 better.

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1 A. Yes.

2 Q. And if asked you'll testify that ODAFF
3 does not consider chicken litter to be a hazardous
4 substance?

5 A. Yes.

6 MR. HAMMONS: Object to the form.

7 Q. (By Mr. Sanders) And if asked you'll
8 testify that ODAFF does not consider that the
9 Illinois River watershed itself or pastures which
10 have received chicken litter or turkey litter should
11 be considered superfund sites?

12 MR. HAMMONS: Object to the form.

13 A. Yes, sir.

14 Q. (By Mr. Sanders) And if asked you'll
15 testify there are multiple sources of nonpoint
16 nutrient contributions?

17 A. I'll say that there are potential.

18 Q. Multiple potential sources?

19 A. Yes, sir.

20 Q. All right. And if asked you'll testify
21 that farmers in the IRW are generally -- generally
22 obey applicable statutes and regulations?

23 A. Yes, sir.

24 MR. HAMMONS: Object to the form.

25 Q. (By Mr. Sanders) And if asked you'll

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1 testify that the farmers in the IRW generally are
2 concerned with the environment?

3 A. Yes, sir.

4 Q. If asked you will testify that you are not
5 aware of any violation of any Oklahoma law or
6 regulation by any Defendant in this proceeding in the
7 IRW?

8 MR. HAMMONS: Object to the form. All
9 these have been asked and answered before.

10 A. Yes, I'm not aware of any. But again, you
11 need to ask Dan Parrish for that direct answer.

12 MR. SANDERS: All right. Because of the
13 time constraints that we have, I'm going to pass the
14 witness at this point. But if we reconvene, I do
15 have other questions I'd like to ask.

16 MR. HAMMONS: Okay.

17 MS. TUCKER: Do you need to take a break?

18 A. No, I'm fine. We're through with 6 and 2?

19 CROSS-EXAMINATION

20 BY MS. TUCKER:

21 Q. Secretary Peach, I'm K. C. Tucker, and I
22 represent -- oh, sorry. I represent the George's
23 Defendants in this matter. I think earlier you said
24 that you had either been on a phone call or in a
25 meeting with some of the State's retained experts in

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1 A. Not that I recall.

2 Q. Are you displeased with this lawsuit?

3 MR. HAMMONS: Object to the form.

4 A. I'm concerned that the effect it could
5 have on the livestock industry.

6 Q. (By Ms. Tucker) What effect do you think
7 it could have on the livestock industry?

8 MR. HAMMONS: Object to the form.

9 A. It could make livestock industry and food
10 production a challenge in America.

11 Q. (By Ms. Tucker) What kind of challenges
12 do you foresee?

13 A. If animal waste was considered hazardous
14 material, it could be damaging --

15 Q. In --

16 A. -- and limit the food production.

17 Q. In what way could it limit the food
18 production?

19 A. It could change the way food production is
20 in America.

21 Q. If it -- if it were up to you, would there
22 be a lawsuit between the state of Oklahoma and the
23 poultry integrators?

24 MR. HAMMONS: Object to the form.

25 A. Yes, there might be because we need to

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1 Arkansas side of the basin?

2 MR. HAMMONS: Object to the form.

3 A. I would believe that he would, yes, sir.

4 MR. GEORGE: Okay. I'll pass the witness.

5 VIDEOGRAPHER: Stand by a minute.

6 (Attorneys change positions.)

7 VIDEOGRAPHER: We're back on the record.

8 CROSS-EXAMINATION

9 BY MR. HIXON:

10 Q. Secretary Peach, my name is Philip Hixon.
11 I represent Peterson Farms in this matter. Is the
12 Department of Agriculture a plaintiff in this
13 lawsuit?

14 MR. HAMMONS: Object to the form.

15 A. We are an indirect plaintiff in this
16 because we are a state agency in the state of
17 Oklahoma.

18 Q. (By Mr. Hixon) Did the Department of
19 Agriculture ask that this lawsuit be brought against
20 the poultry integrators?

21 A. No.

22 Q. You had testified earlier that you had had
23 discussions with Miles Tolbert regarding the lawsuit.
24 Do you recall that?

25 A. Yes, sir.

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1 your farming practices and what crops you grow.

2 Q. Well, for example, you have wheat out
3 there. And after you cut your wheat crop what do you
4 do with it?

5 A. Work the ground.

6 Q. And that means you work in the organic
7 matter that's left over after the wheat's harvested?

8 A. Yes, sir.

9 Q. So that's giving back to the soil, isn't
10 it?

11 A. Yes, sir.

12 Q. And the same with your pasture, do you
13 burn your pasture every year?

14 A. No.

15 Q. Do you ever burn your pasture?

16 A. No.

17 Q. So the grass that doesn't come back the
18 next year and that which gets on the ground it
19 decomposes and that's giving back to the soil too,
20 isn't it?

21 A. Yes, sir.

22 Q. When you apply poultry litter you're not
23 just applying nitrogen and phosphorus and other major
24 nutrients, are you, sir?

25 A. No.

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1 Q. What else are you applying to your soil?

2 A. You're applying nutrients, humus and also
3 soil bacteria.

4 Q. Does chemical fertilizer do that for the
5 soil?

6 A. No, sir.

7 Q. Are those things that you're adding back
8 to the soil healthy for the soil?

9 MR. HAMMONS: Object to the form.

10 A. They're if you're careful with the amount
11 of ingredients that you apply back and you apply
12 those ingredients back based on soil analysis.

13 Q. (By Mr. Tucker) My grandfather was a
14 gentleman farmer, or so he saw himself, out by Lake
15 Overholser here in Oklahoma City. Faircroft Farm was
16 his place. He grew alfalfa. And Oklahoma State came
17 down and talked to him about 1950 and said,
18 "Mr. Johnston, if you'll add some nitrogen at this
19 rate to your fertilizer -- to your alfalfa, you'll
20 get a lot better crop. You'll get probably double
21 the crop you've got now. You can probably get two
22 cuttings instead of one." And so my grandfather
23 being no fool figured that if that much was good, if
24 he put on twice as much, he'd get four times as much
25 alfalfa. That didn't work for him. He lost all his

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1 both?

2 A. For both.

3 Q. Have you seen any reports that indicate
4 whether or not poultry litter is good for pasture?

5 A. Yes, or I wouldn't use it.

6 Q. Okay. So --

7 A. I just answered that.

8 Q. Okay. All right. So -- so good?

9 A. Yes.

10 Q. All right. Okay. Before you became the
11 head of ODAFF --

12 A. Yes.

13 Q. -- and the Secretary of Agriculture did
14 you know folks who raised cattle over in the IRW?
15 Professionally, socially, whatever.

16 A. I specifically wouldn't know what
17 watershed they lived in, no.

18 Q. Okay. Have you gotten any general
19 impression whether or not the use of poultry litter
20 has improved pasture range over in that part of the
21 state?

22 MR. HAMMONS: Object to the form.

23 A. Yes, it has very much improved range
24 conditions in that watershed.

25 Q. (By Mr. Freeman) Is there any special